

Senator Charles Grassley Questions for the Record Joshua Jacobs Nominee, Under Secretary for Benefits, Department of Veterans Affairs

1. As senior advisor to four VA secretaries, you have had a firsthand seat to the VA's series of scandals and breach of public trust. Did you play any role in advising the Secretary of VA in the following crises? If so, please describe that role.

a. The 2014 Phoenix wait list scandal that led to the deaths of many U.S. Armed Services veterans, who died waiting for care at VA facilities, and subsequent whistleblower retaliation of employees that alerted the public;

As Senior Advisor for Benefits in 2014, my portfolio primarily focused on disability claims issues and the provision of other earned non-medical benefits provided by the Veterans Benefits Administration. Following the passage of the Veterans Access, Choice, and Accountability Act, I did provide advice focused on expanding the delivery of healthcare in both the VA and community care settings.

b. The veteran claims backlog, which currently stands at about 743,000 pending claims;

I previously served as Senior Advisor for Benefits. When I arrived in 2013, the disability claims backlog was near its peak, but through collaboration with VBA, we implemented a series of solutions that helped drive down the backlog by 90%. This experience led me to appreciate the scope and scale of the challenges VA faces in the delivery of benefits and the dedication it takes for employees to accomplish this noble mission.

As of February 17, 2023, the disability claims inventory is 740,908, while the disability claims backlog is 194,301.

c. Poor quality processing on military sexual trauma cases, which VA OIG in 2018 reported were erroneously adjudicated by VA 49 percent of the time;

Survivors of military sexual trauma (MST) often carry the scars of what they endured for the rest of their lives. Due to the personal and sensitive nature of MST stressors, victims find it difficult to report or document these events. Due to this fact, it is often difficult to establish the occurrence of the stressor. During my time as Senior Advisor for Benefits, I was involved in discussions focused on lowering the evidentiary threshold and improving training relating to MST claims.

I am aware of the previous VA Office of Inspector General reports that have shown VBA has wrongly denied veterans' disability claims for Post-Traumatic Stress Disorder related to MST at unacceptably high rates. Since assuming the role of Senior Advisor for Policy Performing the Delegable Duties of the Under Secretary for Benefits, I have spoken directly to VA Inspector General Mike Missal about the reports.

If confirmed, I will commit to continuing to improve how VBA processes MST claims and work with Veteran advocates to ensure veterans with MST get a fair review, even if they cannot produce formal evidence to support an MST claim.

d. GI Bill modernization delays;

I did not provide advice regarding GI Bill modernization delays.

e. Ethics violations of Veterans Benefits Administration (VBA) senior leaders; and

I did not provide advice on ethics violations of VBA senior leaders.

f. The Veterans Affairs Office of Inspector General (VA OIG) report substantiating Ms. Charmain Bogue's conflicts of interest.

I did not provide advice regarding the VA OIG report involving Ms. Bogue.

2. As a senior advisor to multiple VA secretaries, have you witnessed or engaged in any deliberate agency delays in releasing VA OIG reports or administrative investigation findings that do not favor the VA? If so, please describe.

No, I have not witnessed or engaged in any deliberate agency delays in releasing VA OIG reports or administrative findings.

3. Have you seen or engaged in deliberate delays of congressional inquiries? If so, please describe.

No, I have not seen or engaged in deliberate delays of congressional inquiries.

4. I have repeatedly called upon the VA to respond to my inquiries regarding ethics violations within the Veterans Benefits Administration. Freedom of Information Act productions have been released to the public, yet limited and narrow information has been produced to me. Is it ever acceptable for an agency to refuse to provide materials to members of Congress based upon their minority-party status, chairmanship status, or to treat member requests as Freedom of Information Act requests? If so, please explain the basis of your position.

If confirmed, I commit to responding to requests for information from the Committee and other members, consistent with executive branch policies and practices.

5. A report issued last year by the VA OIG substantiated allegations by whistleblowers that Ms. Charmain Bogue failed to recuse herself from matters related to her spouse and his employer. She broke conflict of interest rules. VA's Freedom of Information Act productions appear to substantiate that VBA senior leaders knew about Mrs. Bogue's need to recuse and actively prevented adherence to VA Ethics counsel recommendations. There is some indication in the records that VBA leaders may also have engaged in whistleblower retaliation or failed to discipline those who did. Many of these leaders remain at VBA and are, allegedly, members of your senior executive cadre. They include Mike Frueh, your principal deputy; Tom Murphy, your Northeast District Director; Rob Reynolds, Deputy Undersecretary for Disability Assistance; and Robert Worley, Director of the Houston Regional Office.

a. I have repeatedly sought information on these issues since April 2021, yet VA has refused to answer most of my investigative inquiries and questions. Given your role as senior advisor to multiple VA secretaries, did you play any role in the VA's response to me, and if so, did you know about or participate in the VA's decision not to answer my questions?

No, I did not play any role in VA's response to you regarding these issues.

b. How will you ensure proper investigations take place and that all members, regardless of party affiliation or chairmanship status, have their inquiries answered in a timely manner?

During the nine years I spent working in the Senate, including as Deputy Staff Director for the Senate Veterans' Affairs Committee (SVAC), I had the opportunity to work shoulder to shoulder with members and staff from both parties, as well as Veterans Service Organizations, to perform critical oversight and enact legislation that improved benefits and services for Veterans. I understand and deeply respect the dedication and spirit of cooperation members demonstrate to get the job done for Veterans. And if confirmed, I – as a proud alumnus of the Senate -- look forward to working collaboratively with all members of Congress to provide timely and accurate responses to your inquiries.

c. As the Acting Undersecretary, you presumably can open investigations into these matters without waiting for congressional oversight requests. Will you agree to do so?

In cases where there are concerns about unlawful activity, potential violations of rules or regulations, fraud, waste, and abuse, or retaliation for raising these types of concerns, I will contact the appropriate independent investigatory body, which may include organizations such as the VA Office of Inspector General, VA Office of Accountability and Whistleblower Protection, or U.S Office of Special Counsel.

6. Mr. Tom Murphy stated in an email to Secretary McDonough that allegations regarding his NASCAR travel ethics violation and Ms. Bogue's conflicts of interest stemmed from one whistleblower he removed from federal service for technical administrative violations. Allegations dismissed by Mr. Murphy to Secretary McDonough have been substantiated as accurate by OIG and administrative investigations.

a. What steps has VA taken to look into potential whistleblower retaliation by Mr. Murphy or VA staff?

It is my understanding that the VA OIG and OAWP have both conducted investigations relating to Ms. Bogue and Mr. Murphy. However, in light of your concern, I have forwarded your letter to OAWP and noted for them the allegation of potential whistleblower retaliation by Mr. Murphy.

b. Have you ever fired someone you suspected to be a whistleblower? If so, please provide a response with all details directly to my office so that we may make any needed redactions to protect alleged whistleblowers. If you answer affirmatively to this question, please note in your written response that you have provided detailed information separately.

No. I have never fired someone suspected to be a whistleblower.

c. Have you ever promoted, reassigned, or been involved in the selection for public office of anyone you knew had fired a suspected whistleblower? If so, please provide a response with all details directly to my office so that we may make any needed redactions to protect alleged whistleblowers. If you answer affirmatively to this question, please note in your written response that you have provided detailed information separately.

No. I have never promoted, reassigned, or been involved in the selection for public office of anyone I knew had fired a suspected whistleblower.

d. I have repeatedly stated that multiple whistleblowers have engaged my office and asked that the VA protect those harmed by retaliation. Do you agree with the VA's lack of responsiveness to my requests?

I am not familiar with the requests you are referencing or the responsiveness of VA to these requests. However, as the senior-most accountable official in the Veterans Benefits Administration, it is incumbent on the Under Secretary for Benefits (USB) to lead by example. The USB is responsible for setting the tone of the organization, fostering a culture where people feel free to report any potential wrongdoing that occurs and set clear expectations.

The USB must clearly articulate to the broad leadership team - both in headquarters and field offices - the expectation that all employees are free to and encouraged to report violations of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. The USB must also provide meaningful support to employees and leaders that speak up and celebrate their willingness to improve outcomes for those we serve.

e. Mr. Murphy openly admitted to removing a whistleblower from federal service. What steps will you take to investigate this matter?

As noted above, I have forwarded your letter with its allegation of potential whistleblower retaliation to OAWP

7. Many of the senior executives referenced in question four were allegedly hired or promoted into their positions by former Undersecretary of Benefits Allison Hickey and Acting Undersecretary of Benefits Danny Pummill.

a. Were you a senior advisor during the tenure of these individuals, and did you work closely with them?

As Senior Advisor, I participated in meetings with Brig. Gen. Hickey, USAF (Ret) and Mr. Pummill.

b. Did you work with them after leaving the VA during your job at Booz Allen Hamilton?

No. I did not work with Brig. Gen. Hickey, USAF (Ret) and Mr. Pummill during my job at Booz Allen Hamilton.

c. Have you ever received any disclosures by employees or external whistleblowers regarding alleged improprieties or unethical behavior by Mr. Pummill, Mr. Murphy, Mr. Manker, Mr. Frueh, or Ms. Bogue? If so, how did you assist?

Yes, after I started my role as Senior Advisor for Policy Performing the Delegable Duties of the Under Secretary for Benefits, I was notified of an allegation of sexual harassment against a senior VBA leader. Prior to my assuming the role, the allegation had been referred to the Office of

Resolution Management, Diversity & Inclusion (ORMDI), which conducted a fact-finding inquiry. Pursuant to the recommendation of ORMDI, I am supporting possible resolution of this case through mediation, which is in the process of being scheduled.

8. The VA OIG reported in 2019 on the Office of Accountability and Whistleblower Protection (OAWP) being fraught with challenges, including running biased investigations, using its powers to retaliate against whistleblowers, and failing to hold leaders accountable for wrongdoing. In fact, during the period in question, OAWP's own leadership team was found by the VA OIG to have been complicit in steering contracts to friends and referred to the DOJ.

a. Are you aware of these facts?

I am aware of the 2019 VA OIG report on the Office of Accountability and Whistleblower Protection.

b. What has VA done to rectify these shortcomings?

I am informed that the Office of Accountability and Whistleblower Protection (OAWP) has made great strides since the 2019 VA OIG report. It has positioned itself to not only conduct fair and unbiased investigations, based on industry-standard procedures, but to fulfill its full statutory mandate and execute on the tools that Congress provided to VA when it established OAWP. All recommendations made by the VA OIG in its report were closed as of 2021. Since then, OAWP has been focused on continuous improvement of its Investigations Division that has improved timeliness and materially improved management acceptance of its recommendations. While OAWP's investigative function remains important, the current phase of OAWP's growth also has emphasized cultural change, including a robust outreach and training strategy, operationalizing its Compliance Directive which has conducted reviews enabling advice to the Secretary on matters of public import, and trend analysis to enable proactive efforts in areas that may need to be addressed.

9. I have received credible allegations that former VBA officials may have disregarded ethics rules and not maintained acquisition integrity in entering into certain contracts. In light of substantiated ethics violations during the leadership tenure of Mr. Murphy and Ms. Bogue and their role in the award of \$453 million Recovery Act dollars for the GI Bill IT modernization project, the VA OIG must investigate the propriety of awards related to this project.

a. Based upon your personal knowledge, what role did each of these individuals have in steering these contract awards?

I do not have personal knowledge about the role played by Mr. Murphy or Ms. Bogue with respect to the GI Bill IT modernization project.

b. What was their role in determining which contractors or subcontractors would be selected, and in selecting the evaluation body reviewing the bid?

I do not have personal knowledge about the role played by Mr. Murphy or Ms. Bogue with respect to the GI Bill IT modernization project.

c. Are you aware that former Undersecretaries Pummill and Hickey are direct beneficiaries of this contract?

I do not have personal knowledge about whether Brig. Gen. Hickey, USAF (Ret) and Mr. Pummill were involved in this contract.

d. According to USSpending.gov, tens of millions of dollars have been allocated in contracts to their privately held companies. Does this raise concerns for you?

I would be concerned if these contracts, or any others, did not follow the regular fair and competitive federal procurement process.

On February 14, 2023, VBA's chief of staff sent an email to VBA leadership reinforcing the need to both stay within the legal bounds of federal procurement, while also considering the ethicality of our actions and decisions. This message, which was sent at my request, also instructed the supervisors of the Acquisition Directorate to report any instance in which a contracting officer is feeling pressured to make decisions that are not consistent with FAR requirements or sound business practices.

e. Have there been allegations or concerns regarding acquisition improprieties by Mr. Pummill or Ms. Hickey in the past? If so, were they investigated?

I do not have any personal knowledge of any allegations or concerns regarding acquisition improprieties by Brig. Gen. Hickey, USAF (Ret) or Mr. Pummill.

f. Were you aware during your time as Senior Advisor to multiple VA secretaries of any concerns regarding contract irregularities by VBA, including diversion of funds away from VBA programs intended to support Veterans by either Ms. Hickey or Mr. Pummill, or the redirection of funds away from the Education/GI Bill?

During my time as senior advisor, I was not aware of any contracting irregularities involving Brig. Gen. Hickey, USAF (Ret) or Mr. Pummill.

g. How do you and your staff maintain proper distance between VA matters and former officials now seeking VA contracts?

I do not engage in any contract or procurement related conversations with former officials. As noted earlier, I also had a message recently sent to VBA leadership, including my staff, reinforcing the importance to adhering to all legal requirements relating to federal procurement.

h. Are there currently recusals in place by you or your leadership team? If so, please provide all records.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Veterans Affairs Designated Agency Ethics Official (DAEO) to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in

accordance with the terms of an ethics agreement that I have entered into with the Department's DAEO and that has been provided to the Committee. I am not aware of any other potential conflicts of interest.